



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1598/2

JK:kjf:ch

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DOA:.....Koskinen, BB0401 - Direct marketing of cigarettes and tobacco products

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

1-29-05

Do NOT Gen

DN

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

Under current law, generally, a person may not sell cigarettes in this state as a distributor, jobber, vending machine operator, or multiple retailer without having a permit from DOR. Also, a person may not sell tobacco products in this state as a distributor or subjobber without having a permit from DOR. A "jobber" is any person who acquires cigarettes from manufacturers or distributors, stores the cigarettes, and sells the cigarettes to retailers for resale. A "subjobber" is any person, other than a manufacturer or distributor, who buys tobacco products from a distributor and who sells such products to any person other than the ultimate consumer.

This bill prohibits a direct marketer from selling cigarettes or tobacco products to consumers in this state without having the appropriate permit from DOR. Under the bill, "direct marketer" is defined as any person who solicits or sells cigarettes or tobacco products to consumers in this state by direct marketing. The bill defines "direct marketing" as publishing or making accessible an offer for the sale of cigarettes or tobacco products to consumers in this state, or selling cigarettes or tobacco products to consumers in this state, using any means by which the consumer is not physically present at the time of sale on a premise that sells cigarettes or

tobacco products, including using newspapers, magazines, radio or television broadcasts, mailings, the telephone, or the Internet.

A direct marketer who sells cigarettes to consumers in this state must apply to DOR for a permit and submit a fee with the permit application based on the number of cigarettes that the direct marketer sells annually to consumers in this state. If the direct marketer sells no more than ~~30,000~~ cigarettes annually to consumers in this state, the fee is \$500. If the direct marketer sells more than ~~30,000~~ cigarettes annually to consumers in this state, the fee is \$1,000. A direct marketer who sells tobacco products to consumers in this state must apply to DOR for a permit and submit a \$500 fee with the application. Permits issued to direct marketers expire each year on December 31.

Under the bill, DOR will not issue a permit to a direct marketer unless the direct marketer certifies to DOR that all sales of cigarettes or tobacco products to consumers in this state will be ~~checked~~ credit card transactions; that the invoices for all shipments of cigarettes or tobacco products will bear the direct marketer's name, address, and permit number; and that the direct marketer will provide DOR any information that DOR considers necessary for cigarette and tobacco products tax and permit purposes. The direct marketer may not sell any cigarettes or tobacco products unless the sales tax, use tax, cigarette tax, or tobacco products tax, as appropriate, has been paid on the sale of the cigarettes or tobacco products. In addition, a direct marketer may not sell cigarettes or tobacco products in this state unless the direct marketer has a mechanism, approved by DOR, for verifying the age of the purchaser, and the direct marketer receives from the purchaser, at the time of purchase, a copy or facsimile of a government issued identification and the name specified on the identification matches the name of the purchaser.

Under the bill, cigarettes and tobacco products may not be shipped to a person who is under 18 years of age and may not be shipped to a post-office box.

Under current law, a person may not sell cigarettes or tobacco products to consumers in this state unless the person obtains a license from each city, village, or town in which the person intends to sell cigarettes or tobacco products. The city, village, or town may charge not less than \$5 annually nor more than \$100 annually for such a license. Under the bill, no city, village, or town may issue such a license to any person who has an arrest or conviction record related to selling cigarettes or tobacco products or who has not submitted proof to the city, village, or town that he or she holds a valid retailer's permit issued by DOR.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 20.566 (1) (gc) *Administration of cigarette and tobacco product direct*
2 *marketing permits.* From the moneys received from permits issued and penalties
3 assessed under ss. 139.345, 139.40 (2), and 139.795, the amounts in the schedule for
4 enforcing and administering cigarette and tobacco product direct marketing permits
5 and penalties under ss. 139.345, 139.40 (2), and 139.795.

 ***NOTE: This SECTION involves a change in an appropriation that must be
reflected in the revised schedule in s. 20.005, stats.

6 **SECTION 2.** 134.65 (1) of the statutes is amended to read:

7 134.65 (1) No person, except a person who holds a valid permit under s. 139.345
8 or 139.795 and whose business premises is not physically located in this state, shall
9 in any manner, or upon any pretense, or by any device, directly or indirectly sell,
10 expose for sale, possess with intent to sell, exchange, barter, dispose of or give away
11 any cigarettes or tobacco products to any person not holding a license as herein
12 provided or a permit under ss. 139.30 to 139.41 or 139.79 without first obtaining a
13 license from the clerk of the city, village or town wherein such privilege is sought to
14 be exercised.

15 **SECTION 3.** 134.65 (1r) of the statutes is created to read:

16 134.65 (1r) (a) No license under sub. (1) may be issued to any person to whom
17 any of the following applies:

18 1. Subject to ss. 111.321, 111.322, and 111.335, the person has an arrest record
19 or a conviction record.

20 2. Subject to ss. 111.321, 111.322, and 111.335, the person has been convicted
21 of a felony, or as a repeat or habitual offender, unless pardoned.

22 3. The person has not submitted proof as provided under s. 77.61 (11).

(b) The requirements under par. (a) apply to all partners of a partnership, all members of limited liability company, all agents of a limited liability company or corporation, and all officers of a corporation. Subject to ss. 111.321, 111.322, and 111.335, if a business entity has been convicted of a crime, the entity may not be issued a license under sub. (1) unless the entity has terminated its relationship with the individuals whose actions directly contributed to the conviction.

SECTION 4. 134.65 (2) (a) of the statutes is amended to read:

134.65 (2) (a) ~~Except~~ Subject to sub. (1r), and except as provided in par. (b), upon filing of a proper written application a license shall be issued on July 1 of each year or when applied for and continue in force until the following June 30 unless sooner revoked. The city, village or town may charge a fee for the license of not less than \$5 nor more than \$100 per year which shall be paid to the city, village or town treasurer before the license is issued.

SECTION 5. 134.66 (1) (am) of the statutes is created to read:

134.66 (1) (am) "Direct marketer" has the meaning given in s. 139.30 (2n).

SECTION 6. 134.66 (2) (a) of the statutes is amended to read:

134.66 (2) (a) No retailer, direct marketer, manufacturer, distributor, jobber or subjobber, no agent, employee or independent contractor of a retailer, direct marketer, manufacturer, distributor, jobber or subjobber and no agent or employee of an independent contractor may sell or provide for nominal or no consideration cigarettes or tobacco products to any person under the age of 18, except as provided in s. 254.92 (2) (a). A vending machine operator is not liable under this paragraph for the purchase of cigarettes or tobacco products from his or her vending machine by a person under the age of 18 if the vending machine operator was unaware of the purchase.

1 **SECTION 7.** 134.66 (2) (am) of the statutes is amended to read:

2 134.66 (2) (am) No retailer, direct marketer, manufacturer, distributor, jobber,
3 subjobber, no agent, employee or independent contractor of a retailer, direct
4 marketer, manufacturer, distributor, jobber or subjobber and no agent or employee
5 of an independent contractor may provide for nominal or no consideration cigarettes
6 or tobacco products to any person except in a place where no person younger than 18
7 years of age is present or permitted to enter unless the person who is younger than
8 18 years of age is accompanied by his or her parent or guardian or by his or her spouse
9 who has attained the age of 18 years.

10 **SECTION 8.** 134.66 (2) (d) of the statutes is amended to read:

11 134.66 (2) (d) No manufacturer, direct marketer, distributor, jobber, subjobber
12 or retailer, or their employees or agents, may provide cigarettes or tobacco products
13 for nominal or no consideration to any person under the age of 18.

14 **SECTION 9.** 134.66 (2) (e) of the statutes is amended to read:

15 134.66 (2) (e) No retailer or direct marketer may sell cigarettes in a form other
16 than as a package or container on which a stamp is affixed under s. 139.32 (1).

17 **SECTION 10.** 134.66 (3m) of the statutes is created to read:

18 134.66 (3m) **DEFENSE OF DIRECT MARKETER.** Proof of ~~any~~ ^{all} of the following facts
19 by a direct marketer who sells cigarettes or tobacco products to a person under the
20 age of 18 is a defense to any prosecution for a violation under sub. (2) (a):

21 (a) That the direct marketer used a mechanism, approved by the department
22 of revenue, for verifying the age of the purchaser.

23 (b) That the purchaser falsely represented that he or she had attained the age
24 of 18 and presented a copy or facsimile of a government issued identification.

1 (c) That the name and birthdate of the purchaser, as indicated by the purchaser,
2 matched the name and birthdate on the identification presented under par. (b).

3 (d) That the sale was made in good faith, in reasonable reliance on the
4 mechanism described in par. (a) and the representation and identification under
5 pars. (b) and (c), and in the belief that the purchaser had attained the age of 18.

6 **SECTION 11.** 139.30 ~~(1m)~~ ^(1s) of the statutes is created to read:

7 139.30 ~~(1m)~~ ^(1s) "Consumer" means any individual who receives cigarettes for his
8 or her personal use or consumption or any individual who has title to or possession
9 of cigarettes for any purpose other than for sale or resale.

10 **SECTION 12.** 139.30 (2n) of the statutes is created to read:

11 139.30 (2n) "Direct marketer" means ~~any person who solicits or sells cigarettes~~
12 ~~to consumers in this state by direct marketing.~~ ^{a bonded direct marketer or a}
^{direct marketer permittee}

13 **SECTION 13.** 139.30 (2p) of the statutes is created to read:

14 139.30 (2p) "Direct marketing" means publishing or making accessible an offer
15 for the sale of cigarettes to consumers in this state, or selling cigarettes to consumers
16 in this state, using any means by which the consumer is not physically present at the
17 time of sale on a premise that sells cigarettes.

18 **SECTION 14.** 139.30 (3) of the statutes is amended to read:

19 139.30 (3) "Distributor" means any person who acquires unstamped cigarettes
20 from the manufacturer thereof ~~or from the first importer of record thereof~~, affixes
21 stamps to the packages or other containers, stores them and sells them to other
22 permittees or to retailers for resale ~~or~~ and who acquires may acquire stamped
23 cigarettes from ~~another permittee distributor~~ ^{manufacturers or} for such sales. ^{manufacturers or}

24 **SECTION 15.** 139.30 (4n) of the statutes is created to read: ^{distributors}
^{distributors}

1 139.30 (4n) "Government issued identification" includes a valid driver's
2 license, state identification card, passport, or military identification.

3 **SECTION 16.** 139.30 (8s) of the statutes is created to read:

4 139.30 (8s) "Person" means any individual, sole proprietorship, partnership,
5 limited liability company, corporation, or association, or any owner of a single-owner
6 entity that is disregarded as a separate entity under ch. 71.

7 **SECTION 17.** 139.30 (10) of the statutes is amended to read:

8 139.30 (10) "Retailer" means any person who sells, exposes for sale or possesses
9 with intent to sell to consumers any cigarettes by any means in which the consumer
10 is physically present at the time of sale on a premises that sells cigarettes.

11 **SECTION 18.** 139.32 (1) of the statutes is amended to read:

12 139.32 (1) The tax imposed by s. 139.31 (1) shall be paid. To evidence the
13 payment, the department shall provide stamps. A person who has paid the tax shall
14 affix stamps of the proper denomination to each package in which cigarettes are
15 packed, prior to the first sale within this state. First sale does not include a sale by
16 a manufacturer to a distributor or to a direct marketer or by a distributor to a
17 permittee who has obtained department approval as provided for in s. 139.321 (1) (a)
18 2. The tax shall be paid only once on each package or container.

19 ~~**SECTION 19.** 139.32 (4) of the statutes is repealed.~~

20 **SECTION 20.** 139.32 (5) of the statutes is amended to read: *bonded*

21 139.32 (5) Manufacturers, direct marketers, and distributors *bonded* ~~having a permit~~
22 ~~from the secretary~~ shall receive a discount of ~~1.6%~~ 1.6 percent of the tax paid on
23 stamp purchases. *who are authorized to purchase tax stamps*

24 **SECTION 21.** 139.32 (5m) of the statutes is amended to read:

who are authorized to purchase tax stamps
1 139.32 (5m) Distributors, direct marketers, and manufacturers shall pay to
2 the department the cost of printing and shipping those stamps.

3 SECTION 22. 139.32 (6) of the statutes is amended to read:

bonded
4 139.32 (6) Manufacturers, direct marketers, and distributors ~~having a permit~~
5 ~~from the secretary~~ may purchase stamps on credit. The secretary may require
6 manufacturers, direct marketers, and distributors who purchase stamps on credit
7 to file under the conditions prescribed by the secretary by rule.

8 SECTION 23. 139.321 (1) (intro.) of the statutes is amended to read:

9 139.321 (1) (intro.) It is unlawful for any person to possess ~~in excess of 400~~
10 cigarettes unless the required stamps are properly affixed as provided in ss. 139.32
11 (1) and 139.33 (4).

12 SECTION 24. 139.321 (1) (a) 1. of the statutes is amended to read:

bonded
13 139.321 (1) (a) 1. Manufacturers, direct marketers, distributors or warehouse
14 operators possessing valid permits issued by the secretary.

15 SECTION 25. 139.33 (3) of the statutes is amended to read:

bonded
16 139.33 (3) No person other than a member of the armed forces, as specified in
17 this subsection, a licensed distributor, or a licensed direct marketer may import into
18 this state ~~more than 400~~ cigarettes on which the excise tax imposed by s. 139.31 has
19 not been paid and the container of which does not bear proper stamps. Within 15
20 days, any such person importing cigarettes shall file a declaration of such cigarettes
21 imported and shall remit therewith the tax on such cigarettes imposed by this
22 section. Members of the armed forces shall not be required to report or pay the tax
23 on cigarettes in their possession if such cigarettes are issued to them by the U.S.
24 government or any of its subdivisions or were purchased in any armed forces post
25 exchange or service store. If the use tax imposed by this section is not paid when due,

authorized
who is authorized to purchase and
affix tax stamps

1 it shall become delinquent and the person liable for it shall pay, in addition, a penalty
2 of \$25 for each 200 cigarettes. Interest on the delinquent tax and penalty shall accrue
3 at the rate of ~~1.5%~~ 1.5 percent per month or each fraction of a month from the date
4 the tax became due until paid. ~~manufacturers~~ manufacturers

5 **SECTION 26.** 139.34 (1) (a) of the statutes is amended to read:

6 139.34 (1) (a) No person may manufacture cigarettes in this state or sell
7 cigarettes in this state as a distributor, jobber, vending machine operator, direct
8 marketer, or multiple retailer and no person may operate a warehouse in this state
9 for the storage of cigarettes for another person without first filing an application for
10 and obtaining the proper permit to perform such operations from the department.

11 **SECTION 27.** 139.34 (1) (b) of the statutes is repealed.

12 **SECTION 28.** 139.34 (1) (c) (intro.) of the statutes is amended to read:

13 139.34 (1) (c) (intro.) ~~Subject to ss. 111.321, 111.322 and 111.335, no~~ No permit
14 under this section may be granted to any person to whom any of the following applies:

15 **SECTION 29.** 139.34 (1) (c) 1. to 6. of the statutes are repealed.

16 **SECTION 30.** 139.34 (1) (c) 1m. of the statutes is created to read:

17 139.34 (1) (c) 1m. Subject to ss. 111.321, 111.322, and 111.335, the person has
18 an arrest record or a conviction record.

19 **SECTION 31.** 139.34 (1) (c) 2m. of the statutes is created to read:

20 139.34 (1) (c) 2m. Subject to ss. 111.321, 111.322, and 111.335, the person has
21 been convicted of a felony, or as a repeat or habitual offender, unless pardoned.

22 **SECTION 32.** 139.34 (1) (c) 3m. of the statutes is created to read:

23 139.34 (1) (c) 3m. The person has not submitted proof as provided under s.
24 77.61 (11).

25 **SECTION 33.** 139.34 (1) (cm) of the statutes is created to read:

director, and shareholders

1 139.34 (1) (cm) The requirements under par. (c) apply to all partners of a
2 partnership, all members of ^{for} limited liability company, all agents of a limited liability
3 company or corporation, and all officers of a corporation. Subject to ss. 111.321,
4 111.322, and 111.335, if a business entity has been convicted of a crime, the entity
5 may not be issued a permit under this subsection unless the entity has terminated
6 its relationship with the individuals whose actions directly contributed to the
7 conviction.

NOTE
10-7

8 SECTION 34. 139.34 (4) of the statutes is amended to read:

9 139.34 (4) A separate permit shall be required of and issued to each class of
10 permittee and the holder of any permit shall perform only the operations thereby
11 authorized. Such permit shall not be transferable from one person to another or from
12 one premises to another. A separate permit shall be required for each place where
13 cigarettes are stamped or where cigarettes are stored for sale at wholesale or,
14 through vending machines or multiple retail outlets, or by direct marketing.

15 SECTION 35. 139.34 (6) of the statutes is amended to read:

16 139.34 (6) A vending machine operator or a multiple retailer may acquire
17 unstamped cigarettes ^{plan} ~~from the manufacturers thereof~~ ^{retailer} and affix the stamps to
18 packages or other containers only if the vending machine operator or multiple
19 retailer also holds a permit as a distributor ^{bonded} or direct marketer.

20 SECTION 36. 139.34 (8) of the statutes is amended to read:

21 139.34 (8) The holder of a warehouse permit is entitled to store cigarettes on
22 the premises described in the permit. The warehouse permit shall not authorize the
23 holder to sell cigarettes. Unstamped cigarettes stored in a warehouse for a
24 manufacturer, direct marketer, or distributor may be delivered only to a person
25 holding a permit as a manufacturer, direct marketer, or distributor.

or as a bonded who is authorized
to purchase and
affix tax stamps

1 **SECTION 37.** 139.345 of the statutes is created to read:

2 **139.345 Direct marketing.** (1) (a) (intro.) No person may sell cigarettes to

3 consumers in this state as a direct marketer or solicit sales of cigarettes to consumers
4 in this state by direct marketing unless the person has obtained a permit from the
5 department to make such sales or solicitations. The person shall file an application
6 for a permit under this subsection with the department, in the manner prescribed
7 by the department, and shall submit the following fee with the application:

8 1. If the person sells ~~no more than 30,000~~ ^{less than 600,000} cigarettes annually to consumers in
9 this state by direct marketing, \$500. ^{or more}

10 2. If the person sells ~~more than 30,000~~ ^{600,000 or more} cigarettes annually to consumers in this
11 state by direct marketing, \$1,000.

12 (b) A permit issued under par. (a) expires on December 31 of each year.

13 (c) The department may not issue a permit to a person under par. (a) unless the
14 person certifies to the department ^{in the manner prescribed by the department,} that the person shall acquire stamped cigarettes

15 from a licensed ~~wholesaler or~~ distributor or unstamped cigarettes from the ~~first~~
16 ~~importer of record~~ thereof, pay the tax imposed under this subchapter on all

17 unstamped cigarettes and affix stamps to the cigarette packages or containers as

18 provided under s. 139.32 (1), store such packages or containers, and sell only such

19 packages or containers to consumers in this state by direct marketing; or ^{acquire} ~~purchase~~

20 cigarettes from a distributor, to the packages or containers of which stamps have

21 been affixed as provided under s. 139.32 (1), and sell only such packages or

22 containers to consumers in this state by direct marketing.

23 (d) No person may be issued a permit under this subsection unless the person
24 certifies to the department, in the manner prescribed by the department, that all

25 cigarette sales to consumers in this state shall be credit card ~~or personal check~~

manufacturer
manufacturer

1 transactions; that the invoices for all shipments of cigarette sales from the person
2 shall bear the person's name and address and permit ultimately issued under this
3 subsection; and that the person shall provide the department any information the
4 department considers necessary to administer this section.

5 (2) (a) No person may purchase tax stamps in excess of the number of cigarette
6 sales specified in his or her permit under sub. (1) (a) unless the person pays the
7 permit fee under sub. (1) (a) that is applicable to the excess amount.

8 (b) No person may sell cigarettes in excess of the number of cigarette sales
9 specified in his or her permit under sub. (1) (a) unless the person pays the permit fee
10 under sub. (1) (a) that is applicable to the excess sales. Any person who sells
11 cigarettes in excess of the number of cigarette sales specified in his or her permit
12 shall pay a penalty to the department of ~~\$5,000~~ ^{\$1,000} or an amount that is equal to \$50 for
13 every 200 cigarettes, or fraction of 200 cigarettes, whichever is greater.

14 (3) (a) No person may sell cigarettes to consumers in this state by direct
15 marketing unless the tax imposed under s. 139.31 (1) is paid on such cigarettes and
16 stamps are affixed to the cigarette packages or containers as provided under s.
17 139.32.

18 (b) No person may sell cigarettes to consumers in this state by direct marketing
19 unless the tax imposed under s. 77.52 or 77.53 is paid on the sale of such cigarettes.

20 (c) No person may sell cigarettes to consumers in this state by direct marketing
21 unless the cigarette brands are approved by the department and listed in the
22 directory of certified tobacco product manufacturers and brands as provided under
23 s. 895.12 (2) (b).

1 (4) No person may sell cigarettes to a consumer in this state by direct
2 marketing unless the person verifies the consumer's identity and that the consumer
3 is at least 18 years of age by any of the following methods:

4 (a) The person uses a database, approved by the department, that includes
5 information based on public records to verify the consumer's age and identity.

6 (b) The person receives from the consumer, at the time of purchase, a notarized
7 copy of a government issued identification, the name specified on the identification
8 matches the name of the consumer, and the birth date on the identification verifies
9 that the purchaser is at least 18 years of age.

10 (c) The person uses a mechanism, other than a mechanism under par. (a) or (b),
11 for verifying the age and identity of a consumer that is approved by the department.

12 (5) Any person who, without having a valid permit under sub. (1), sells or
13 solicits sales of cigarettes to consumers in this state by direct marketing shall pay
14 a penalty to the department of \$5,000 or an amount that is equal to \$50 for every 200
15 cigarettes, or fraction of 200 cigarettes, sold to consumers in this state by direct
16 marketing, whichever is greater.

17 (6) (a) No sale of cigarettes to a consumer in this state by direct marketing may
18 exceed 10 cartons for each invoice or 20 cartons in a 30-day period for each purchaser
19 or address.

20 (b) Any person who sells cigarettes that exceed the maximum amounts under
21 par. (a) shall pay a penalty to the department of \$5,000 or an amount that is equal
22 to \$50 for every 200 cigarettes, or major fraction of 200 cigarettes, sold above the
23 maximum amounts, whichever is greater.

24 (c) Any person who purchases cigarettes that exceed the maximum amounts
25 under par. (a) shall apply for a permit under s. 139.34 and shall pay a penalty to the

department of \$25 for every 200 cigarettes, or fraction of 200 cigarettes, purchased above the maximum amounts.

(7) No cigarettes may be shipped to a person who is under 18 years of age and no cigarettes may be shipped to a post-office box. INSERT 14-9

(8) All revenue collected from permits and penalties under this section shall be credited to the appropriation account under s. 20.566 (1) (gc) to enforce and administer this section.

SECTION 38. 139.35 (1) of the statutes is amended to read:

139.35 (1) TRANSFERS. No person may give, sell or lend any stamps to another and no person may accept, purchase or borrow any stamps from another. All sales and transfers of stamps may be made only by the secretary to permit holding are authorized purchase and manufacturers, ~~direct~~ ^{bonded} marketers and distributors. who are authorized to purchase and affix tax stamps

SECTION 39. 139.37 (1) (a) of the statutes is amended to read:

139.37 (1) (a) No person shall sell cigarettes or ~~take orders for cigarettes for~~ resale solicit cigarette sales in this state ~~for any manufacturer or permittee without~~ first obtaining a unless the person has filed an application for and obtained a valid certificate under s. 73.03 (50) and a salesperson's permit from the department of revenue. No manufacturer or permittee shall authorize any person to sell cigarettes or take orders for cigarettes solicit cigarette sales in this state ~~without first having~~ such person secure unless the person has filed an application for and obtained a valid certificate under s. 73.03 (50) and a salesperson's permit. No person shall authorize another person to sell cigarettes or solicit cigarette sales in this state unless the person has filed an application for and obtained a valid certificate under s. 73.03 (50) and a valid permit under s. 139.34. The department shall issue the required number of permits to manufacturers and permittees who hold a valid certificate issued under

or the person for whom the salesperson is soliciting

1 s. 73.03 (50). Each application for a permit shall disclose the name and address of
2 the employer and such permit shall remain effective only while the salesperson
3 represents such named employer. ^{or person} If such salesperson is thereafter employed by
4 another ~~manufacturer or permittee~~ person, the salesperson shall obtain a new
5 salesperson's permit. Each ~~manufacturer and~~ permittee shall notify the department
6 within 10 days after the resignation or dismissal of any such salesperson holding a
7 permit.

8 **SECTION 40.** 139.38 (1) of the statutes is amended to read:

9 139.38 (1) Every manufacturer located out of the state shall keep records of all
10 sales of cigarettes shipped into this state. Every manufacturer located in the state
11 shall keep records of production, sales and withdrawals of cigarettes. Every
12 distributor and direct marketer shall keep records of purchases and sales of
13 cigarettes. Every manufacturer, ^{bonded} direct marketer, and distributor ~~holding a permit~~
14 ~~from the secretary with the right~~ to purchase and apply stamps shall also keep
15 records of purchases and disposition of stamps. Every jobber, multiple retailer, and
16 vending machine operator shall keep records of all purchases and disposition of
17 cigarettes. Every warehouse operator shall keep records of receipts and withdrawals
18 of cigarettes. All such records shall be accurate and complete and be kept in a
19 manner prescribed by the secretary. These records shall be preserved on the
20 premises described in the permit or license in such a manner as to ensure
21 permanency and accessibility for inspection at reasonable hours by authorized
22 personnel of the department.

23 **SECTION 41.** 139.38 (1m) of the statutes is created to read:

24 139.38 (1m) Records of purchases and sales of cigarettes under sub. (1) that
25 are kept by direct marketers shall indicate, for each shipment of cigarettes into this

who is authorized

1 state in the month preceding the report under sub. (2), the invoice date and number;
2 the quantity of cigarettes shipped; the brand name of the cigarettes shipped; the
3 manufacturer of the cigarettes shipped and the ~~manufacturer's~~ ^{point of} origin; the
4 purchaser's name, address, and birth date; the name of the person to whom the
5 cigarettes were shipped; the address to which the cigarettes were shipped; and any
6 other information the department requires.

7 **SECTION 42.** 139.38 (2) of the statutes is amended to read:

8 139.38 (2) (a) Except as provided in par. (b), every permittee manufacturer,
9 distributor, jobber, and direct marketer shall render a true and correct invoice of
10 every sale of cigarettes at wholesale and every permittee shall on or before the 15th
11 day of each calendar month file a verified report of all cigarettes purchased, sold,
12 received, warehoused or withdrawn during the preceding calendar month.

13 (b) The department may allow any jobber, multiple retailer, direct marketer, ^{permitted}
14 or vending machine operator ^{permittee} who does not sell cigarettes, except for those
15 on which the tax under this chapter is paid, to file a quarterly report. The quarterly
16 report shall be filed on or before the 15th day of the next month following the close
17 of each calendar quarter. The report shall specify the number of cigarettes purchased
18 and sold during the preceding calendar quarter.

19 **SECTION 43.** 139.395 of the statutes is amended to read:

20 **139.395 Theft of tax moneys.** All cigarette tax moneys received by a
21 distributor, ^{bonded} direct marketer, or manufacturer for the sale of cigarettes on which the
22 tax under this subchapter has become due and has not been paid are trust funds in
23 the hands of the distributor, ^{bonded} direct marketer, or manufacturer and are the property
24 of this state. Any distributor, ^{bonded} direct marketer, or manufacturer who fraudulently
25 withholds, appropriates or otherwise uses cigarette tax moneys that are the property

1 of this state is guilty of theft under s. 943.20 (1), whether or not the distributor, direct
2 marketer, or manufacturer has or claims to have an interest in those moneys.

3 **SECTION 44.** 139.40 (2) of the statutes is amended to read:

4 139.40 (2) ~~If cigarettes which do not bear the proper tax stamps or on which~~
5 ~~the tax has not been paid~~ Cigarettes that are so seized ~~they~~ as provided under sub.
6 (1) may be given to law enforcement officers to use in criminal investigations or sold
7 to qualified buyers by the secretary, without notice. If the cigarettes are sold, after
8 deducting the costs of the sale and ~~the keeping of~~ storing the property, the proceeds
9 of the sale shall be paid into the state treasury, except that proceeds from the sale
10 of cigarettes seized from a direct marketer and obtained through the administration
11 of this subsection shall be credited to the appropriation account under s. 20.566 (1)
12 (gc). If the secretary finds that such cigarettes may deteriorate or become unfit for
13 use in criminal investigations or for sale or that those uses would otherwise be
14 impractical, the secretary may order them destroyed or give them to a charitable or
15 penal institution for free distribution to patients or inmates.

16 **SECTION 45.** 139.45 of the statutes is amended to read:

17 **139.45 Prosecutions by attorney general.** Upon request by the secretary
18 of revenue, the attorney general may represent this state or assist a district attorney
19 in prosecuting any case arising under this subchapter or under ss. 134.65 and 134.66.

20 **SECTION 46.** 139.75 (2) of the statutes is amended to read:

21 139.75 (2) "Consumer" means any individual who receives tobacco products for
22 his or her personal use or consumption or any person individual who has title to or
23 possession of tobacco products ~~in storage for use or other consumption in this state~~
24 any purpose other than for sale or resale.

25 **SECTION 47.** 139.75 (3g) of the statutes is created to read:

INSERT
17-15

1 139.75 (3g) “Direct marketer” means any person who solicits or sells tobacco
2 products to consumers in this state by direct marketing.

3 **SECTION 48.** 139.75 (3r) of the statutes is created to read:

4 139.75 (3r) “Direct marketing” means publishing or making accessible an offer
5 for the sale of tobacco products to consumers in this state, or selling tobacco products
6 to consumers in this state, using any means by which the consumer is not physically
7 present ~~at the time of sale~~ on a premise that sells tobacco products.

8 **SECTION 49.** 139.75 (4) (a) of the statutes is amended to read:

9 139.75 (4) (a) Any person in this state engaged in the business of selling tobacco
10 products ~~in this state~~ who brings, or causes to be brought, into this state from outside
11 the state any tobacco products for sale;

12 **SECTION 50.** 139.75 (4) (c) of the statutes is amended to read:

13 139.75 (4) (c) Any person outside this state engaged in the business of selling
14 tobacco products ~~outside this state~~ who ships or transports tobacco products to
15 retailers in this state to be sold by those retailers.

16 **SECTION 51.** 139.75 (4) (cm) of the statutes is created to read:

17 139.75 (4) (cm) Any person outside this state engaged in the business of selling
18 tobacco products who ships or transports tobacco products to consumers in this state.

19 **SECTION 52.** 139.75 (4n) of the statutes is created to read:

20 139.75 (4n) “Government issued identification” includes a valid driver’s
21 license, state identification card, passport, or military identification.

22 **SECTION 53.** 139.75 (5s) of the statutes is created to read:

23 139.75 (5s) “Person” means any individual, sole proprietorship, partnership,
24 limited liability company, corporation, or association, or any owner of a single-owner
25 entity that is disregarded as a separate entity under ch. 71.

1 **SECTION 54.** 139.75 (7) of the statutes is amended to read:

2 139.75 (7) “Retail outlet” means each place of business from which tobacco
3 products are sold to consumers by a retailer.

4 **SECTION 55.** 139.75 (8) of the statutes is amended to read:

5 139.75 (8) “Retailer” means any person engaged in the business of selling
6 tobacco products who sells, exposes for sale, or possesses with intent to sell, to
7 ultimate consumers any tobacco products by any means in which the consumer is
8 physically present at the time of sale on a premises that sells tobacco products.

9 **SECTION 56.** 139.76 (3) of the statutes is created to read:

10 139.76 (3) Except as provided in sub. (2), no person may possess tobacco
11 products in this state unless the tax imposed under sub. (1) is paid on such tobacco
12 products.

13 **SECTION 57.** 139.78 (1m) of the statutes is created to read:

14 139.78 (1m) Except as provided in s. 139.76 (2), no person other than a
15 distributor with a valid permit under s. 139.79 may import into this state tobacco
16 products for which the tax imposed under s. 139.76 (1) has not been paid.

17 **SECTION 58.** 139.79 (title) of the statutes is amended to read:

18 **139.79 (title) Permits; distributor; direct marketer; subjobber.**

19 **SECTION 59.** 139.79 (1) of the statutes is amended to read:

20 139.79 (1) No person may engage in the business of a distributor, direct
21 marketer, or subjobber of tobacco products at any place of business unless that
22 person has filed an application for and obtained a permit from the department to
23 engage in that business at such place.

24 **SECTION 60.** 139.79 (2) of the statutes is amended to read:

INSERT
19-8

1 139.79 (2) Section 139.34 (1) ~~(b)~~ (c) to (f), (4) and (9) applies to the permits under
2 this section.

3 **SECTION 61.** 139.795 of the statutes is created to read:

4 **139.795 Direct marketing.** (1) (a) No person may sell tobacco products by
5 direct marketing to consumers in this state as a direct marketer or solicit sales of
6 tobacco products to consumers in this state by direct marketing unless the person has
7 obtained a permit from the department to make such sales or solicitations. The
8 person shall file an application for a permit under this subsection with the
9 department, in the manner prescribed by the department, and shall submit a \$500
10 fee with the application.

11 (b) No person may be issued a permit under this subsection unless the person
12 holds a valid distributor's permit under s. 139.79. Section 139.34 (1) (c) to (f), (7), and
13 (9), as it applies to permits issued under s. 139.34, applies to permits issued under
14 this subsection.

15 (c) A permit issued under this subsection expires on December 31 of each year.

16 (d) No person may be issued a permit under this subsection unless the person
17 certifies to the department, in the manner prescribed by the department, that all
18 tobacco product sales to consumers in this state shall be credit card ~~or personal check~~
19 transactions; that the invoice for all shipments of tobacco product sales from the
20 person shall bear the person's name and address and permit ultimately issued under
21 this subsection; and that the person shall provide the department any information
22 the department considers necessary to administer this section.

23 (2) No person may sell tobacco products to consumers in this state by direct
24 marketing unless the tax imposed under s. 139.76, and under s. 77.52 or 77.53, has
25 been paid with regard to such products.

(3) No person may sell tobacco products to a consumer in this state by direct marketing unless the person ~~verifies the consumer's identity~~ and that the consumer is at least 18 years of age by ~~any~~ of the following ~~methods~~: *person does all*

(a) The person uses a ~~database~~ *mechanism*, approved by the department, ~~that includes~~ information based on public records to verify the consumer's age ~~and identity~~.

(b) The person receives from the consumer, at the time of purchase, a ~~polarized~~ *or facsimile* copy of a government issued identification, the name specified on the identification matches the name of the consumer, ~~and the birth date on the identification verifies~~ that the purchaser is at least 18 years of age.

(c) The person uses a mechanism, other than a mechanism under par. (a) or (b), for verifying the age and identity of a consumer that is approved by the department.

(4) Any person who, without having a valid permit under sub. (1), sells or solicits sales of tobacco products to consumers in this state by direct marketing shall pay a penalty to the department of \$5,000 or an amount that is equal to 50 percent of the tax due on the tobacco products the person sold, without having a valid permit under sub. (1), to consumers in this state by direct marketing, whichever is greater.

(5) No tobacco products may be shipped or delivered to a person who is under 18 years of age and no tobacco products may be shipped to a post-office box. *INSERT 21-18*

(6) All revenue collected from permits and penalties under this section shall be credited to the appropriation account under s. 20.566 (1) (gc).

SECTION 62. 139.81 (1) of the statutes is amended to read:

139.81 (1) No person may sell ~~or take orders for~~ tobacco products ~~for resale or~~ solicit sales of tobacco products in this state ~~for any manufacturer or permittee~~ unless the person has filed an application for and obtained a valid certificate under s. 73.03 (50) and a salesperson's permit from the department. No ~~manufacturer or~~

1 permittee shall authorize any person to sell ~~or take orders for~~ tobacco products or
2 solicit sales of tobacco products in this state unless the person has filed an application
3 for and obtained a valid certificate under s. 73.03 (50) and a salesperson's permit.

4 No person may authorize another person to sell tobacco products or solicit sales of
5 tobacco products in this state unless the person has filed an application for and
6 obtained a valid certificate under s. 73.03 (50) and a valid permit under s. 139.79.

7 Each application for a permit shall disclose the name and address of the employer
8 and shall remain effective only while the salesperson represents the named
9 employer. If the salesperson is thereafter employed by another ~~manufacturer or~~
10 ~~permittee person~~ the salesperson shall obtain a new salesperson's permit. Each
11 ~~manufacturer and~~ permittee shall notify the department within 10 days after the
12 resignation or dismissal of any salesperson holding a permit.

13 **SECTION 63.** 139.81 (2) of the statutes is amended to read:

14 139.81 (2) Section 139.34 (1) ~~(b)~~ (c) to (e) applies to the permits under this
15 section.

16 (END)

INSERT 22-15

(d-n)



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1598/3

JK:kjf&lk:ch

DOA:.....Koskinen, BB0401 - Direct marketing of cigarettes and tobacco products

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

INSERT
JOY (to Ins 22-15)

1 **NO**
2 **AN ACT to repeal** 139.34 (1) (b) and 139.34 (1) (c) 1. to 6. **renumber** 139.30
3 of the statutes, the amendment of sections 134.65 (1), 134.65 (2) (a), 134.65 (5), 134.66 (1) (a), 134.66 (2) (a),
4 139.32 (4), 139.32 (5), 139.32 (5m), 139.32 (6), 139.321 (1) (intro.), 139.321 (1)
5 (a) 1., 139.33 (3), 139.34 (1) (a), 139.34 (1) (c) (intro.), 139.34 (3), 139.34 (4),
6 139.34 (6), 139.34 (8), 139.35 (1), 139.37 (1) (a), 139.38 (1), 139.38 (2), 139.395,
7 139.40 (2), 139.44 (3), 139.44 (4), 139.44 (7), 139.45, 139.75 (2), 139.75 (4) (a),
8 139.75 (4) (c), 139.75 (7), 139.75 (12), 139.79 (title), 139.79 (1), 139.79 (2), 139.81
9 (1), 139.81 (2), 254.911 (1) and 891.455 (4) and **the creation of sections** 20.566 (1) (gc), 134.65
10 (1n), 134.65 (1r), 134.66 (1) (am), 134.66 (3m), 139.30 (1d), 139.30 (1s), 139.30
11 (2n), 139.30 (2nn), 139.30 (2p), 139.30 (4n), 139.30 (8s), 139.34 (1) (c) 1m.,
12 139.34 (1) (c) 2m., 139.34 (1) (c) 3m., 139.34 (1) (cm), 139.345, 139.38 (1m),

1 139.44 (6m), 139.75 (3g), 139.75 (3r), 139.75 (4) (cm), 139.75 (4n), 139.75 (5s),
2 139.76 (3), 139.78 (1m) and 139.795 of the statutes relating to the budget.

(end insert JOY)

Analysis by the Legislative Reference Bureau

TAXATION

OTHER TAXATION

Under current law, generally, a person may not sell cigarettes in this state as a distributor, jobber, vending machine operator, or multiple retailer without having a permit from DOR. Also, a person may not sell tobacco products in this state as a distributor or subjobber without having a permit from DOR. A "jobber" is any person who acquires cigarettes from manufacturers or distributors, stores the cigarettes, and sells the cigarettes to retailers for resale. A "subjobber" is any person, other than a manufacturer or distributor, who buys tobacco products from a distributor and who sells such products to any person other than the ultimate consumer.

This bill prohibits a direct marketer from selling cigarettes or tobacco products to consumers in this state without having the appropriate permit from DOR. Under the bill, "direct marketer" is defined as any person who solicits or sells cigarettes or tobacco products to consumers in this state by direct marketing. The bill defines "direct marketing" as publishing or making accessible an offer for the sale of cigarettes or tobacco products to consumers in this state, or selling cigarettes or tobacco products to consumers in this state, using any means by which the consumer is not physically present at the time of sale on a premise that sells cigarettes or tobacco products, including using newspapers, magazines, radio or television broadcasts, mailings, the telephone, or the Internet.

A direct marketer who sells cigarettes to consumers in this state must apply to DOR for a permit and submit a fee with the permit application based on the number of cigarettes that the direct marketer sells annually to consumers in this state. If the direct marketer sells no more than 600,000 cigarettes annually to consumers in this state, the fee is \$500. If the direct marketer sells more than 600,000 cigarettes annually to consumers in this state, the fee is \$1,000. A direct marketer who sells tobacco products to consumers in this state must apply to DOR for a permit and submit a \$500 fee with the application. Permits issued to direct marketers expire each year on December 31.

Under the bill, DOR will not issue a permit to a direct marketer unless the direct marketer certifies to DOR that all sales of cigarettes or tobacco products to consumers in this state will be credit card transactions; that the invoices for all shipments of cigarettes or tobacco products will bear the direct marketer's name, address, and permit number; and that the direct marketer will provide DOR any information that DOR considers necessary for cigarette and tobacco products tax and permit purposes. The direct marketer may not sell any cigarettes or tobacco products unless the sales tax, use tax, cigarette tax, or tobacco products tax, as appropriate, has been paid on the sale of the cigarettes or tobacco products. In addition, a direct marketer may not sell cigarettes or tobacco products in this state unless the direct

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1598/3dn

JK:kjf:ch

8

1K

(date)

John and Jennifer:

Please review this draft carefully to ensure that it is consistent with your intent. ✓
Please note that, as currently drafted, the mechanism for verifying the identity of the purchaser of tobacco products is not the same as the mechanism for verifying the age and identity of the purchaser of cigarettes. Is that difference intended? ✓

✓ I did not include the language which would have required license applications to be filed "at least 15✓days prior to granting the license" because it seemed circular. If you haven't yet been granted a license how do you know when to file the application so that it's 15✓days prior to having a license granted? ✓ I also don't know how that timing would work with the timing allowed under current law, as provided in s. 134.65 (2)(a).

Joseph T. Kreye
Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1598/3dn
JK:kjf&lk:rs

January 24, 2005

John and Jennifer:

Please review this draft carefully to ensure that it is consistent with your intent. Please note that, as currently drafted, the mechanism for verifying the identity of the purchaser of tobacco products is not the same as the mechanism for verifying the age and identity of the purchaser of cigarettes. Is that difference intended?

I did not include the language which would have required license applications to be filed "at least 15 days prior to granting the license" because it seemed circular. If you haven't yet been granted a license how do you know when to file the application so that it's 15 days prior to having a license granted? I also don't know how that timing would work with the timing allowed under current law, as provided in s. 134.65 (2) (a).

Joseph T. Kreye
Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.state.wi.us